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9 IN THE UNITED STATES DISTRICT COURT
 10 FOR THE EASTERN DISTRICT OF CALIFORNIA
 11 FRESNO DIVISION

13 **JEFF SILVESTER, BRANDON COMBS,**
 14 **THE CALGUNS FOUNDATION, INC., a**
 15 **non-profit organization, and THE SECOND**
 16 **AMENDMENT FOUNDATION, INC., a**
 17 **non-profit organization,**

Plaintiffs,

v.

19 **KAMALA D. HARRIS, Attorney General of**
 20 **California (in her official capacity),**

Defendant.

1:11-cv-02137-AWI-SKO

**DEFENDANT’S RESPONSE TO
 PLAINTIFFS’ SUPPLEMENTAL BRIEF
 FOR ATTORNEY FEES**

Judge: Hon. Anthony W. Ishii

Action Filed: December 23, 2011

22 Defendant Kamala Harris submits the following response to Plaintiffs’ Supplemental Brief
 23 Regarding Attorneys’ Fees Spent on Post-Trial Motions and Fee Application. (Dkt. 130.)

24 Plaintiffs seek recovery of fees incurred by their attorneys, Don Kilmer, Bradley Benbrook,
 25 and Stephen Duvernay, in opposing post-judgment motions and in preparing the fees motion.

26 Plaintiffs’ supplemental request for attorneys’ fees should be reduced because Plaintiffs’ request
 27 is based on unreasonably high rates for their attorneys, as determined by the prevailing rate
 28

1 charged by attorneys of similar skill and experience in the community, the nature of work
 2 performed, and by the novelty and difficulty of the issues. *See Kerr v. Screen Extras Guild, Inc.*
 3 *526 F.2d 67, 69 (9th Cir. 1975); Moreno v. City of Sacramento, 534 F.3d 1106, 1114 (9th Cir.*
 4 *2010).*

5 First, Plaintiffs' request should be reduced because they seek recovery of fees at rates up to
 6 more than 80 percent higher than those of the prevailing rate in Fresno. As Defendant showed, in
 7 the Memorandum of Points and Authorities in Opposition to Plaintiffs' Motion for Attorneys'
 8 Fees (Dkt. 124), the relevant community for determining attorneys' rates in this case is Fresno,
 9 and reasonable rates in Fresno range from \$255 to \$350 per hour. (Dkt. 124 at pp. 4-7 (citing
 10 *Jadwin v. County of Kern, 767 F.Supp.2d 1067, 1130 (E.D. Cal. 2011)* and *J & J Sports Prods.,*
 11 *Inc. v. Corona, No. 1:12-cv-01844-LJO-JLT, 2014 WL 1513426 at * 3 (E.D. Cal. Apr. 16,*
 12 *2014).*) Here, however, Plaintiffs seek recovery at rates up to more than 80 percent higher than
 13 those of the prevailing rates in Fresno. Specifically, Plaintiffs seek \$640 per hour for Mr. Kilmer,
 14 \$425 per hour for Mr. Benbrook, and \$325 per hour for Mr. Duvernay. Plaintiffs present no
 15 evidence that these rates are in line with the prevailing rates in Fresno.

16 Mr. Kilmer and Mr. Benbrook's fees should be calculated at a rate of no more than \$350
 17 per hour. Mr. Duvernay, as an attorney with less than eight years of experience, should recover
 18 fees calculated at the low end of the range, at \$255 per hour.

19 Second, Plaintiffs' fee request should be reduced because the nature of work performed—
 20 preparation of a fee application and opposition to a post-judgment motion—is ordinary and
 21 routine, and because they present no novel or particularly difficult issues.

22 In sum, for the post-judgment work that their attorneys performed, Plaintiffs should recover
 23 no more than the fees, as determined with reasonable rates, outlined in the table below:

Attorney	Hours	Rate Requested	Reasonable Rate	Subtotal
Don Kilmer	5.0	\$640/hr	\$350/hr	\$1,750.00
Bradley Benbrook	1.9	\$425/hr	\$350/hr	\$665.00
Stephen Duvernay	9.9	\$325/hr	\$255/hr	\$2,524.50

1 Defendant respectfully requests that the Court reduce the fee sought for post-judgment
2 work by Plaintiffs' counsel and award no more than \$4,939.50.
3

4 Dated: December 16, 2014

Respectfully submitted,

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6 Attorney General of California
7 MARK R. BECKINGTON
8 Supervising Deputy Attorney General

/s/ Peter H. Chang

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